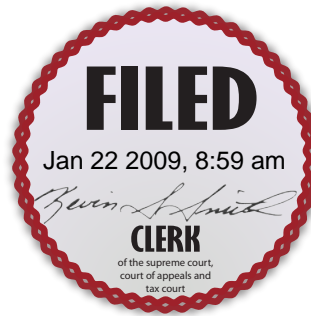


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

MARK C. BORSCHEL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LEONARD WECHSLER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 49A05-0806-CR-348

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0704-FC-61731

January 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Leonard Wechsler appeals his convictions, after a jury trial, for class C felony forgery¹ and class D felony theft.²

We affirm.

ISSUE

Whether the evidence is sufficient to sustain Wechsler's convictions.

FACTS

From November of 2006 through January of 2007, Michael Dicks ("Michael") lived with his parents, Jack and Kathleen Dicks ("Mr. and Mrs. Dicks"); on occasion, he also stayed at the home of his friend, Shonda, where he first met Wechsler.

Mr. and Mrs. Dicks had a checking account at Union Federal Bank. They were the only persons authorized to write checks on that account. Subsequently, Peter Weist, of America's Cash Express ("ACE Check Cashing"), contacted Mr. and Mrs. Dicks to inquire about three checks written to Wechsler from their account. Mr. and Mrs. Dicks denied knowing Wechsler, and advised Weist that they had neither written nor authorized the writing of the checks. Mr. Dicks reviewed his bank statements and observed that some of the check numbers were "kind of out of sequence" because they were from a check book that he had not yet begun using. (Tr. 36). Mr. and Mrs. Dicks then confronted Michael about the stolen checks.

¹ Indiana Code § 35-43-5-2.

² Ind. Code § 35-43-4-2.

Michael initially denied involvement, but ultimately admitted that he had stolen his parents' checkbook and had written several checks to himself. He also admitted that he told Wechsler he had stolen and forged some of the checks; had shown the checkbook to Wechsler and Shonda; and, that some checks were written in their presence. Wechsler subsequently "asked if he could get some money," and Michael told Wechsler that he "would need to get reimbursed . . . because [he] shouldn't be [writing the checks]." (Tr. 89, 66). Wechsler promised to repay the money. After speaking with Michael and learning of the forgeries, Mr. Dicks filed a forgery report with the Indianapolis Metropolitan Police Department ("IMPD").

In all, Michael wrote three checks -- check number 1888, check number 1889, and check number 1896 -- all payable to Wechsler. On each check, Michael filled in the date, the memo line,³ and signed his father's name as payor. Wechsler then filled in the payment sum and his name as the payee. Wechsler also crossed out Mr. and Mrs. Dicks' telephone number and substituted another number in its place.

Wechsler presented the three checks for payment at ACE Check Cashing on December 30, 2006, January 3, 2007 and January 4, 2007. Store manager Weist attempted to ensure the validity of the check. He questioned Wechsler about the new handwritten telephone number and Wechsler responded that it was his sister's house and telephone number and that Jack Dicks was at her residence. On the first two occasions,

³ On the memo lines of two checks, Michael noted "computer work" and "service call" because Wechsler had advised that he "had money coming from" those two ventures. (Tr. 69).

Weist telephoned and spoke to a man who claimed to be Jack Dicks. On both occasions, the man stated that he had written the checks and told Weist that he could cash them.

On the third occasion, Weist asked Wechsler why he had received three different checks on three different dates from Mr. and Mrs. Dicks. Wechsler responded that the money was payment for computer work he had done for the couple. Weist again called the telephone number; he spoke with a woman claiming to be Mrs. Dicks. She gave Weist permission to cash the check. Later, IMPD detective Glenn Goss questioned Weist about the check casher's identity, and Weist identified Wechsler's picture in a photo array.

On April 11, 2007, the State charged Michael and Wechsler with various offenses in a joint charging information.⁴ Wechsler was charged with three counts of class C felony forgery and one count of class D felony theft. The trial court conducted a jury trial on April 2, 2008. Mr. and Mrs. Dicks, Michael, and Weist testified to the foregoing facts. After the close of the evidence, the jury deliberated and found Wechsler guilty as charged. On May 16, 2008, the trial court imposed sentence as follows: for the forgery convictions, three concurrent two-year sentences; and on the theft conviction, a 545-day sentence to be served concurrently with the other sentences. The trial court then suspended Wechsler's sentences and placed him on probation for a two-year period. Wechsler now appeals.

⁴ Michael pleaded guilty to five counts of class C felony forgery and one count of class D felony theft.

DECISION

Wechsler argues that with respect to each of his convictions, the State “lacked sufficient evidence to support all essential elements of its prima facie case.” Wechsler’s Br. at 4. He also argues that he reasonably believed that Michael had authority to cash checks drawn on Mr. and Mrs. Dicks’ account and, therefore, a mistake of fact existed that precluded his convictions. We cannot agree.

When addressing sufficiency of the evidence challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. We consider only the probative evidence and reasonable inferences therefrom that support the verdict. If there is conflicting evidence, we consider that evidence only in the light most favorable to the judgment. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment.

Lohmiller v. State, 884 N.E.2d 903, 908 (Ind. Ct. App. 2008) (internal citations omitted).

1. Forgery

First, with respect to the forgery conviction, Wechsler argues that the State failed to prove that he “acted with intent to defraud Mr. and Mrs. Dicks . . . because the checks obtained from Michael Dicks corresponded to his actual surname and for other material reasons.” Wechsler’s Br. at 4.

In order to convict a defendant of forgery, as a class C felony, the State must prove that he, with the intent to defraud, made, uttered, or possessed a written instrument that purported to have been made: (1) by another person; (2) at another time; (3) with different provisions; or (4) by authority of one who did not give authority. I.C. § 35-43-5-2(b).

Here, the evidence presented by the State was sufficient to prove that Wechsler acted with the intent to defraud Mr. and Mrs. Dicks. “[I]ntent to defraud may be proven by circumstantial evidence,” which “will often include the general conduct of the defendant when presenting the instrument for acceptance.” *Williams v. State*, 892 N.E.2d 666, 671, (Ind. Ct. App. 2008). “An intent to defraud involves an intent to deceive and thereby work a reliance and injury.” *Id.*

The facts reveal that Wechsler asked Michael to write checks from a stolen checkbook on an account bearing someone else’s name. Michael told Wechsler that he was not authorized to write the checks, and “shouldn’t be doing [it].” (Tr. 66). However, when Wechsler promised to repay the money, Michael partially filled in the checks and signed his father’s name as payor. Wechsler then filled in the payment sum and his name as the payee. He also scratched out Mr. and Mrs. Dicks’ printed telephone number on the checks, substituted another telephone number, and arranged to have someone answer at the substituted telephone number pretending to be Mr. or Mrs. Dicks when ACE Check Cashing called about the checks. Wechsler personally presented the checks for cashing and told Weist that they were payment for computer services rendered, when in fact, he neither knew nor had ever worked for Mr. and Mrs. Dicks. The mere act of knowingly presenting a forged check alone is sufficient proof that the defendant intended to deprive another of the value of that check. *Williams*, 892 N.E.2d at 671.

Wechsler’s claim that Michael gave untruthful testimony and had actually filled out each check merely amounts to an invitation for us to reweigh the evidence and assess

the credibility of a witness, which we cannot do. The State presented overwhelming evidence from which the jury could properly conclude that Wechsler committed the charged forgery offenses.

2. Theft

Next, as to his theft conviction, Wechsler argues that the State did not demonstrate that he “‘exercised unauthorized control’ over the checks in question . . . because the checks obtained from Michael Dicks corresponded to his actual surname” Wechsler’s Br. at 4.

In order to convict Wechsler of theft, as a class D felony, the State was required to prove that he knowingly or intentionally exerted unauthorized control over the property of another person, with the intent to deprive the other person of any part of its value or use.

The facts reveal that Wechsler knew that the checks were stolen and did not bear Michael’s name. He was aware that Michael was not authorized to write checks on the account; yet, he inserted his name as payee on three checks and filled in the payment sums. He then personally presented the checks for cashing at ACE Check Cashing and received \$700.00 from the account of Mr. and Mrs. Dicks, whom he did not know and to whom he had rendered no services.

Based upon the foregoing facts, the jury was well within its discretion when it found that Wechsler knowingly or intentionally exerted unauthorized control over Mr.

and Mrs. Dicks' property with the intent to deprive them of its value. The evidence established beyond a reasonable doubt that Wechsler committed the crime of theft.

3. Mistake of Fact

Wechsler acknowledges that the affirmative defense of mistake of fact was “not specifically argued at trial,” but insists that he reasonably believed that Michael had authority to draw from his parents' account and, therefore, committed a mistake of fact which precludes his convictions. We disagree.

Wechsler has not demonstrated that he made a reasonable mistake of fact as to whether Michael had authority to write checks on Mr. and Mrs. Dicks' account. Indiana Code Section 35-41-3-7 provides, “It is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense.” We have previously held that “[i]n order for mistake of fact to be a valid defense, three elements must be satisfied: (1) the mistake must be honest and reasonable; (2) the mistake must be about a matter of fact; and (3) the mistake must negate the culpability required to commit the crime.” *Simmons v. State*, 876 N.E.2d 1170, 1170 (Ind. Ct. App. 2007). Regarding what constitutes an ‘honest’ and ‘reasonable’ mistake, “our supreme court has stated that ‘[h]onesty is a subjective test dealing with what appellant actually believed; reasonableness is an objective test inquiring what a reasonable man situated in similar circumstances would do.’” *Nolan v. State*, 863 N.E.2d 398, 404 (Ind. Ct. App. 2007).

The evidence shows that Wechsler knew that Michael did not have permission to write checks on his parents' account and because the pre-printed accountholder information on the checks did not include Michael's name. Moreover, Michael told Wechsler that he had stolen the checks and "shouldn't be [writing them for Wechsler's benefit]", (Tr. 66); that Michael signed the checks with the name of "Jack Dicks" before giving them to Wechsler, who then inserted payment sums of his choosing and his name as the payee. No reasonable person would believe that Mr. and Mrs. Dicks gave consent to Michael under those circumstances.

Viewed in its totality, the evidence most favorable to the judgment is sufficient to establish beyond a reasonable doubt that Wechsler intended to defraud and deprive Mr. and Mrs. Dicks of the funds in their bank account; thus, we affirm his convictions.

Affirmed.

RILEY, J., and VAIDIK, J., concur.